





**Homeland
Security**

November 22, 2010

MEMORANDUM FOR: DHS FOIA Appeal Officers
DHS FOIA Officers

FROM: Mary Ellen Callahan 
Chief FOIA Officer

Ivan K. Fong 
General Counsel

SUBJECT: Freedom of Information Act Appeal Monthly Reporting

As you know, in the past year, the Department has undertaken efforts to ensure that we employ a consistent and coordinated approach to the processing of FOIA appeals throughout the Department. In furtherance of this goal, the Department has instituted a practice that permits each component to process its own FOIA appeals, but requires components that develop a significant backlog of appeals to use an alternative means to reduce or eliminate their backlog. We are currently referring backlogged FOIA appeals to Administrative Law Judges with the United States Coast Guard.

The General Counsel and the Chief FOIA Officer are working to determine the maximum number of backlogged appeals that each component may carry before the appeals are reassigned. We will provide you with greater details on those guidelines once they are developed.

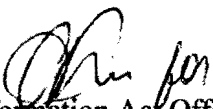
Accordingly, starting with the October monthly report, we are asking all DHS FOIA Appeal Officers to report FOIA appeal statistics to the DHS FOIA Office as part of the monthly reporting requirement. The DHS FOIA Office will directly advise FOIA Officers as to the type of statistics needed. If you have questions, please contact Catherine Papoi, Deputy Chief FOIA Officer, at 703-235-0165.



Homeland Security

November 24, 2010

MEMORANDUM FOR: Distribution

FROM: Mary Ellen Callahan 
Chief Freedom of Information Act Officer

SUBJECT: U.S. Department of Homeland Security (DHS) Application
of FOIA Exemption (b)(6) to DHS Personnel Information
Contained within Agency Records

This memorandum provides guidance on how DHS personnel information contained within agency records should be processed throughout the Department under the Freedom of Information Act (FOIA), 5 U.S.C. § 552. It incorporates by reference all terms and provisions of the Chief FOIA Officer and Associate General Counsel – General Law’s joint memorandum issued March 4, 2008, which also addressed the application of FOIA Exemption (6) (5 U.S.C. § 552(b)(6)) to identifying information about DHS personnel.¹

It is the policy of the Department to evaluate the release of personally identifying information on employees and individual DHS employees’ names on a case-by-case basis, and to implement this policy consistently across the components. Each such evaluation must consider the factors set forth in the *Reporters’ Committee* decision, which held that “information that does not directly reveal the operation or activities of the federal government falls outside the ambit of the public interest that the FOIA was enacted to serve.”² When processing records under the FOIA, the Department shall carefully consider whether the disclosure of identifying information about individual employees will shed light on how DHS performs its statutory duties.

In determining whether to withhold the information under Exemption 6, consideration shall focus on whether a release of the identifying information would cause a “clearly unwarranted invasion” of the employee’s privacy and whether the privacy interest of the employee(s) outweighs the public interest in that information.³

¹ Chief FOIA Officer and Associate General Counsel-General Law Joint Memorandum, DHS Treatment of DHS Personnel Information Contained within Agency Records Processed Pursuant to the FOIA, March 4, 2008, available at http://www.dhs.gov/xlibrary/assets/foia/priv_cfoiao_agc_memo_treatment_of_dhs_personnel_info_pursuant_to_foia_20080304.pdf.

² *Department of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749, 775 (1989).

³ See 5 U.S.C. § 552(b)(6).

In many cases information that identifies individual DHS employees does not directly shed light on the operations or activities of the government, and FOIA officers should withhold it. For example, employee direct phone numbers and email addresses should generally be withheld under Exemption 6, while main phone numbers should generally be released. However, please be cognizant of the fact certain information about federal employees may be releasable pursuant to Office of Personnel Management (OPM) regulations.⁴ It is important to note senior-level agency officials have a lesser expectation of privacy than lower-level, administrative employees.⁵

While it is not practicable or desirable to establish a basis for categorically withholding the names of all DHS employees in all instances, it is consistent with Attorney General Holder's implementing guidelines to evaluate the release of personally identifying information on a case-by-case basis. As the Attorney General noted in his FOIA memorandum issued on March 19, 2009, the disclosure requirements of the FOIA are not absolute.⁶

Additionally, please note DHS policy affords Exemption (b)(7)(C) protection in addition to Exemption 6 protection for identifying information about employees context of records compiled for law enforcement purposes.

Any questions may be directed to Catherine Papoi, Deputy Chief FOIA Officer at (703) 235-0790 or FOIA@dhs.gov.

⁴ 5 C.F.R. § 293.311

⁵ *Forest Serv. Employees for Envtl. Ethics v. U.S. Forest Service*, 524 F.3d 1021, 1025 (9th Cir. 2008), (quoting *Dobronski v. FCC*, 17 F.3d 275, 280 n.4 (9th Cir. 1994)).

⁶ Attorney General's Memorandum for the Heads of Executive Departments and Agencies, Freedom of Information Act, March 19, 2009, available at http://www.dhs.gov/xlibrary/assets/foia/ag_foia_memo2009-03-19.pdf.





Homeland Security

Privacy Office, Mail Stop 0655

JUN 14 2010

MEMORANDUM FOR: DHS FOIA Officers

FROM: Mary Ellen Callahan 
Chief Privacy Officer
Chief Freedom of Information Act Officer

William Peterson 
Executive Director
Office of Accessible Systems & Technology

SUBJECT: Creating 508-Compliant PDF Documents

This guide provides instructions for converting a redacted document into a Section 508 Compliant¹ Adobe PDF. The Privacy Office follows the National Security Agency (NSA)'s recommended procedure for redacting documents.² This process renders document content inaccessible to 508-required assistive technology because the document is converted into a print image. Although general guidance and sample information is provided in this guide for reference, organizations are encouraged to obtain Section 508/accessibility training, offered by DHS or their organization. Follow the process below in order to make a print image 508-compliant after the document has been properly redacted.

To make the document Section 508 compliant, perform the following steps:

¹ In 1998, Congress amended the Rehabilitation Act to require Federal agencies to make their electronic and information technology accessible to people with disabilities. Inaccessible technology interferes with an individual's ability to obtain and use information quickly and easily. Section 508 was enacted to eliminate barriers in information technology, to make available new opportunities for people with disabilities, and to encourage development of technologies that will help achieve these goals. The law applies to all Federal agencies when they develop, procure, maintain, or use electronic and information technology. Under Section 508 (29 U.S.C. § 794d), agencies must give disabled employees and members of the public access to information that is comparable to the access available to others.

² "Redacting with Confidence: How to Safely Publish Sanitized Reports Converted from Word 2007 to PDF," dated March 18, 2008; "Redacting with Confidence: How to Safely Publish Sanitized Reports Converted from Word to PDF," dated February 2, 2006; and, Chief FOIA Officer and Chief Security Officer's joint memorandum, Redacting Sensitive Information, May 5, 2010.

1. Converting a Redacted Document into a Section 508 Compliant PDF

Before a PDF can be considered 508 accessible, it must contain an actual text content layer, be properly tagged, have a logical reading order, images must be accompanied with alternative text, and the document must have a specified language.

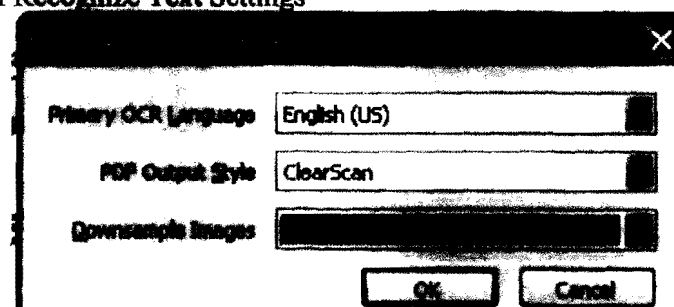
2. Creating Accessible Content in a Redacted Document

Printing a document as an image renders the textual content of the document inaccessible to assistive technology, such as screen readers, and alternative devices. Because the redacted information is completely removed when performing the NSA's recommended redaction process, only content that should be accessed by the public is made available when the document is scanned using the Optical Character Recognition (OCR) function. To make the content 508 accessible, OCR must be performed.

3. TO OCR a document:

- a. From Acrobat's main menu select **Document>OCR Text Recognition>Recognize Text using OCR**.
- b. When the Text Recognition box appears, select **Edit** to modify the OCR settings.
- c. Select the desired Primary OCR language.
- d. Change the PDF's Out Put Style to **Clear Scan**.
- e. Set the Downsample Images to **Lowest (600 dpi)**.

Figure 1: Example of Recognize Text Settings



4. Adding Tags to the Document

Once OCR has been performed, the document must be tagged. Adding tags to a document establishes the document's structure and creates a reading order. To quickly tag a document from Acrobat's main menu select **Advanced>Accessibility>Add Tags to Document**.

5. Adjusting Reading Order

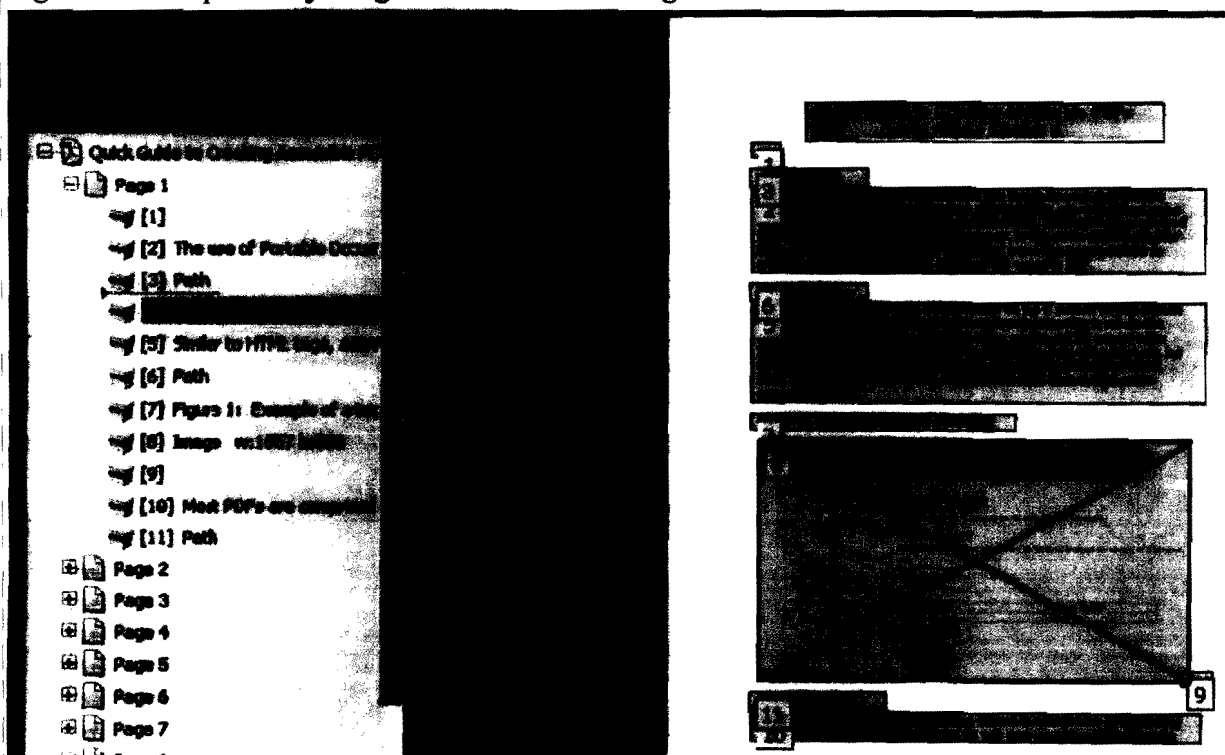
The reading order determines the order a screen reader reads document elements. In some cases the Physical View, which is the print view, and the Content View, which is

the reading order are not synchronized, therefore; the reading order needs to be adjusted to match the physical view.

6. To adjust the reading order:

- a. From Acrobat's main menu, select **View>Navigation Panel>Order**. Once the **Order Panel** is displayed, numbers will appear on the document, revealing the document's reading order.
- b. Identify the first element that is out of place and in the **Order Panel** click on the box to the left of the element and drag the element to the proper location. Continue this process until all elements are in the proper reading order. If all elements are in the correct order, no adjustments are necessary.

Figure 2: Example of adjusting the document's reading order



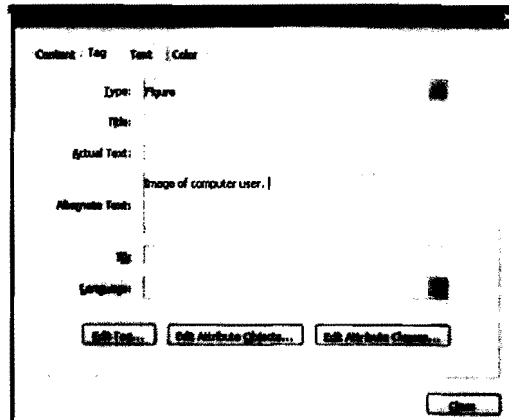
7. Adding Alternative Text

Alternative text is used to convey the purpose of images or objects embedded in documents. Without alternative text, valuable information is lost, and the document may not be completely understood by users accessing the document with assistive technology or alternative devices.

8. To add alternative text to redacted sections of the document and all images that conveys information:

- a. From Acrobat's main menu, select **View>Navigation Panel>Tags**.
- b. Expand the Tag's tree and locate the first **<Figure>** tag.
- c. Right click on the desired tag in the tags tree and select **Properties**.
- d. Go to the **Alternative Text** field located on the **Touchup Properties** window and add the appropriate alternative text. Alternative text for redacted text should be "Redacted text".
- e. Place cursor outside of **Alternative Text** box and close the window. Once the document is saved, the alternative text will be applied.

Figure 3: Example of adding alternative text to a Figure tag



9. Test Document for Section 508 Compliance

- a. To access Adobe's Accessibility Full Check:
- b. Select **Advanced >Accessibility>Full Check**
- c. Select the **Select All** button to check all the check boxes. This will ensure that the PDF is tested for full accessibility.
- d. Select **Start Checking** button.

If the Accessibility Full Checker finds any errors, an **Accessibility Report**, that provides suggestions for repairing the document, will appear on the screen. If additional help is needed, Press the **F1** key to launch **Adobe Help Viewer**.

Caution: The Accessibility Full Checker will not verify that the reading is correct. Use a screen reader to test the reading order.

Figure 4: Example of Adobe's Accessibility Report

Accessibility Report

Filename:
Heading Level 1.pdf

Checking Option:
Adobe PDF

Use this report to identify potential accessibility errors. Click on the link for each error to highlight the location of the error in the PDF file.

Report Contents

- [Detailed Report](#)
- [Summary](#)

Heading Level 1

Heading level one is reserved for the main title of a document

Heading Level 2

Are like chapter titles of a book, they are the main headings for sec

- List item
- List item
- List item

Column Header	Column Header
Data	Data

10. Adobe's Read Out Loud Screen reader
- a. From the View menu select Read Out Loud<Activate Read Out Loud.
 - b. Select View>Read Out Loud>Start.



Homeland Security

MAY 5 2010

MEMORANDUM FOR: Security Officials and FOIA Officers

FROM:

Jerry Williams
Chief Security Officer

Mary Ellen Callahan
Chief Privacy Officer/Chief FOIA Officer

SUBJECT: Redacting Sensitive Information

In light of recent events associated with the unsuccessful efforts to permanently redact sensitive information posted on a publicly available website, we remind you of the availability and use of reliable guidance to assure confidence in redaction, and the requirement to follow each step of the guidance when redacting sensitive information in DHS documents.

Enclosed with this correspondence you will find two documents published by the Information Assurance Directorate of the National Security Agency (NSA): "Redacting with Confidence: How to Safely Publish Sanitized Reports Converted from Word 2007 to PDF," dated March 18, 2008; and "Redacting with Confidence: How to Safely Publish Sanitized Reports Converted from Word to PDF," dated February 2, 2006. The latter publication addresses data created using Microsoft Word 2003 and Adobe Acrobat 7 and predecessor software, while the former addresses Microsoft 2007, Adobe Acrobat 8.1, and later versions. These documents identify the acceptable technical method for redacting documents.

Prior to posting any materials on a publicly accessible web site or in any other instance where redaction of sensitive information is appropriate, the materials must be sanitized using the procedures cited in the enclosed guidance. Additionally, upon completion of a redaction and prior to such posting, Components shall perform an independent quality control check on the redacted material to verify and assure that permanent redaction has been successful; any cover sheet used exclusively to identify the sensitivity of the posted document, e.g., DHS Form 11042-2, FOUO Cover Sheet, has been removed so it is not included with the posted document; and that previously applied sensitivity markings within the document, such as "For Official Use Only," are struck through (see attached example). Alternative guidance other than the NSA guidance provided above may be used provided it results in the successful and verifiable permanent redaction of sensitive information in a manner equal to or better than that provided above.

Each Component FOIA Office shall include this guidance in their respective standard operating procedures. Each Component Security Office shall ensure that Component Security directives are updated to include appropriate guidance on redaction of sensitive

information. Further, the Office of the Chief Security Officer, in collaboration with Headquarters FOIA, will be working towards the creation of a training class that specifically targets the step-by-step process of performing a redaction and verifying the success of a permanent redaction. Class availability will be publicized when the product is completed.

If you have any questions, please contact Catherine Papoi, Deputy Chief FOIA Officer, at 703-235-0790, or (b) (6) or John J. Young, Chief, Administrative Security Division, at (b) (6), or (b) (6).

Enclosures

cc: Component Heads



DHS Mission and Vision

The Department of Homeland Security's primary and urgent mission is to lead the unified national effort to secure the country and preserve our freedoms. While the Department was created to secure our country against terrorism, our charter also includes preparation for and response to *all* hazards, both natural and man-made. The citizens of the United States must have the utmost confidence in the Department's ability to execute all its missions.

The Department leverages resources within Federal, State, and local governments, coordinating multiple agencies and programs into a single, integrated agency focused on protecting the American people and their homeland. More than 87,000 different governmental jurisdictions at the Federal, State, and local level have homeland security responsibilities. DHS seeks to develop a complementary system connecting all levels of government, addressing gaps without duplicating effort.

Background

Following substantial debate about how the government would organize to most effectively address challenges to U.S. domestic security, the Department of Homeland Security was established by the *Homeland Security Act of 2002* and began operations on March 1, 2003. DHS represented the consolidation of all or part of over 22 Federal Departments and Agencies with personnel now totaling over 218,000. This Transition Briefing Book sets forth the Department's current organization, programs, and activities.

Vision

The vision of the Department is "A secure America, a confident public, and a strong and resilient society and economy".

Mission

We will lead the unified national effort to secure America. We will:

- Prevent and deter terrorist attacks,
- Protect against, and respond to, threats and hazards to the Nation, and
- Secure our national borders while welcoming lawful immigrants, visitors, and trade.

The 2008 Strategic Plan

Securing the Homeland: The Department of Homeland Security Strategic Plan, Fiscal Years 2008-2013 serves to focus the Department's mission and sharpen operational effectiveness, particularly in delivering services to support Department-wide initiatives and the other mission goals. It identifies the goals and objectives by which we continually assess our performance. The Department uses performance measures at all levels to monitor our strategic progress and program success. This process also keeps the Department's priorities aligned, linking programs



and operations to performance measures, mission goals, resource priorities, and strategic objectives.

Point of Contact

- Alan Cohn, Deputy Assistant Secretary for Policy (Strategic Plans), (b) (6)



Homeland Security

Privacy Office, Mail Stop 0655

July 7, 2009

MEMORANDUM FOR: All DHS FOIA Officers

FROM:

Mary Ellen Callahan
Chief FOIA Officer and Chief Privacy Officer

SUBJECT:

Guidelines for Reporting on Significant FOIA Activity for
Inclusion in the Cabinet Report to the White House

Every Thursday, components must report significant FOIA activities, including significant FOIA releases, for the past working week to the Privacy Office. The Privacy Office FOIA leadership integrates the information into its weekly report to the White House Liaison. Negative reports are required.

Guidelines for submissions:

1. Submit items by e-mail within the text of the e-mail, not attachments.
2. Submit incoming FOIA requests and appeals, significant FOIA releases, and FOIA litigation information.
3. Select FOIA requests for submission if one of the following criteria are met:
 - a. The FOIA request relates to a Presidential or agency priority;
 - b. The FOIA requester or requested documents will garner media attention or is receiving media attention;
 - c. The FOIA request is for documents associated with meetings with prominent elected, business, and/or community leaders;
 - d. The FOIA request is for congressional correspondence;
 - e. The FOIA request is from a member of Congress;
 - f. The FOIA request is from a member of the media;
 - g. The FOIA request is from a member of an activist group, watchdog organization, special interest group, etc.;
 - h. The FOIA request is for documents associated with a controversial or sensitive subject;
 - i. The FOIA request is for documents associated with a senior official of the component;
 - j. A FOIA appeal if it meets one of the "a" through "i" criteria;
4. Items listed above in 3 are suggestive and not exclusive – exercise prudent judgment and submit items that reflect the spirit and intent of this report. If in doubt, please submit.
5. Submissions found not to meet the above criteria may not be included in the final Cabinet

Report to the White House.

Unless the Item 3 criteria is met, do not report the following (not an exhaustive or exclusive list):

1. Requests for contracts or grants
2. Requests for "A" files
3. Requests for FOIA logs
4. Requests for incident reports (including boating incidents, etc.)
5. Requests for budget documents
6. Requests for genealogy documents
7. 3rd party requests for personnel training or employee records
8. Privacy Act requests

Format for submitting FOIA items to the weekly report:

1. Identify the requester's name, city and state (spell out name of state).
2. Identify the requester by affiliation (private citizen, organization membership, etc.).
3. Identify your component as the receiving component (in the case of transfers within DHS, the initial component receiving the request will report the item).
4. Provide a brief description of any lesser-known organization's mission.
5. The first time an acronym is used it should follow its full title and be in parentheses
6. Provide a brief summary of the requested records.
7. Italicize large publications, but use quotes for smaller units within publications. Do not abbreviate media names.
8. Do not use any bullets in your formatting.
9. Any elected official needs to include party, state affiliation, and district if applicable: Senator John Smith (R-NY), Representative John Smith (R, IN-01).
10. If the FOIA request has been assigned to sub-component(s), identify the sub-component(s) to whom it has been assigned
11. If submitting FOIA items related to FOIA releases, please indicate the scope of the submission (number of released pages) as well as identifying any exemptions that may have been taken.

Editing Reminders:

1. Spell out the month.
2. Numbers 10 and above and periods of time, distance, percentage, money, age, and measurement should be expressed in numerals, not words, except when a number begins a sentence.
3. Spell out "percent."
4. Use comma before "and" in a series – i.e. "Federal, State, and local officials."
5. Capitalize "Federal", "State" (when referring to a unit of government), official titles, "Nation" (when referring to the United States), and "Members of Congress."
6. Begin paragraph with "On (month) (date)". Do not add "th" or "st" after date.
7. If there is a continuous event, please type out "through" instead of adding a dash.

Sample format:

I. Efficiency and Transparency - Steps taken to increase transparency and make forms and processes used by the general public more user-friendly, particularly web-based and FOIA related items:

- The Coast Guard recently announced plans to post on its web site all times, dates, and agendas of the Commandant's meetings with representatives of private industry within 24 hours.

II. FOIA requests

- On June 25, 2009, **Emily Ramshaw** of *The Dallas Morning News* in Austin, Texas, requested from Immigration and Customs Enforcement (ICE) the following, as they pertain to a provided list of Texas detention facilities: 1) All inspection/conditions reports since January 1, 2007; 2) The number of abuse, neglect or exploitation allegations at each of these facilities in each of the last two years and the percentage that were confirmed; and 3) The number of psychiatrists or psychologists currently employed at each of these facilities.
- On June 26, 2009, **Kate Brumback**, a reporter for the *Associated Press*, in Washington, D.C, requested from U.S. Immigration and Customs Enforcement (ICE) information related to a former detainee at the Stewart Detention Facility in Lumpkin, Georgia, who passed away during a stay at a hospital in Columbus, Georgia, while in custody on March 11, 2009.
- On June 30, 2009, **Timothy Kehrner**, a representative from the **Democratic Senatorial Campaign Committee** in Washington, D.C., requested from United States Citizenship and Immigration Services (USCIS) all correspondence between USCIS and the following Senators: Michael Bennet (D-CO), Robert Bennett (R-UT), Barbara Boxer (D-CA), Jim Bunning (R-KY), Richard Burr (R-NC), Christopher Dodd (D-CT), Kirsten Gillibrand (D-NY), Blanche Lincoln (D-AK), Harry Reid (D-NV), Arlen Specter (D-PA), and David Vitter (R-LA).

III. FOIA releases

- On May 12, 2009, the Department of Homeland Security (DHS) Privacy Office released to *The Washington Times* a 97-page log of Congressional correspondence. Certain information withheld pursuant to FOIA Exemption 6.

IV. FOIA litigation

- DHS was named as a defendant in *Smith v. U.S.* in which Smith is challenging his arrest at a border crossing in El Paso as unconstitutional.

Please direct any questions regarding this requirement to Vania T. Lockett, Associate Director of Disclosure and FOIA, at 703-235-0790.



Homeland Security

March 24, 2009

MEMORANDUM FOR: Distribution

FROM: Mary Ellen Callahan
Chief FOIA Officer *MEC*

SUBJECT: Attorney General's Guidelines on the Freedom of Information Act

On January 21, 2009, the President issued a memorandum on the Freedom of Information Act (FOIA) to the heads of all Federal agencies. In that memorandum, the President directed the Attorney General to issue new guidelines on FOIA. Per the President's instructions, Attorney General Eric Holder issued guidance governing the administration of FOIA on March 19, 2009. As Chief FOIA Officer for DHS, I wish to ensure timely dissemination of this information to all DHS FOIA officers and those who oversee FOIA operations at DHS components. Accordingly, I call on all FOIA offices DHS-wide to process FOIA requests with the presumption that, in the face of doubt, openness prevails. The Attorney General emphasized in his memorandum that we must all do our part to ensure transparency and administer FOIA effectively. At this time, I would like to remind all DHS employees of this shared responsibility.

Furthermore, per the Attorney General's memorandum, agencies should work proactively and promptly to make information public, including leveraging modern technology to disseminate information. In particular, I would like to remind components of the requirements outlined in subsection (a)(2) of the FOIA. Under subsection (a)(2), federal agencies must make four distinct categories of records affirmatively available for "public inspection and copying." Agencies must satisfy this "Reading Room" provision of the FOIA by providing the designated documents either solely in electronic Reading Rooms on agency websites, or in a combination of electronic and conventional "paper" Reading Rooms. The four categories of Reading Room records are:

1. "final opinions [and] . . . orders" made in the adjudication of cases;
2. specific agency policy statements;
3. "administrative staff manuals and instructions to staff that affect a member of the public"; and
4. records disclosed in response to a FOIA request that "the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records."

FOIA-related questions should be answered by me, Vania Lockett, Associate Director of Disclosure and FOIA Operations, or William Holzerland, Associate Director of Disclosure and FOIA Program Development; legal concerns about this matter should be directed to David Palmer, Deputy Associate General Counsel (Legal Counsel).

Attachment: Attorney General Holder's Memorandum

Distribution:

Chief of Staff for Operations

General Counsel

Under Secretary, Management

Chief Procurement Officer

Chief Information Officer

Chief Operating Officer, National Protection & Program Directorate

Assistant Secretary, Policy

Under Secretary, Science and Technology

Under Secretary, Office of Intelligence & Analysis

Deputy Director, U.S. Citizenship and Immigration Services

Commandant, U.S. Coast Guard

Commissioner, U.S. Customs and Border Protection

Assistant Secretary, U.S. Immigration & Customs Enforcement

Administrator, Federal Emergency Management Agency

Director, U.S. Secret Service

Assistant Secretary, Transportation Security Administration

Citizenship & Immigration Services Ombudsman

Officer for Civil Rights and Civil Liberties

Director of the Office of Counternarcotics Enforcement

Director of the Domestic Nuclear Detention Office

Director, Federal Law Enforcement Training Center

Federal Coordinator, Recovery and Rebuilding of Gulf Coast Region

Assistant Secretary, Office of Health Affairs/Chief Medical Officer

Inspector General

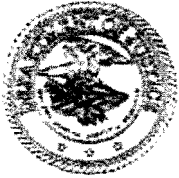
Assistant Secretary, Office of Legislative Affairs

Director, Operations Coordination

Director, National Cyber Security Center

Executive Secretary

Assistant Secretary, Public



Office of the Attorney General

Washington, D.C. 20530

March 19, 2009

MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM:  THE ATTORNEY GENERAL

SUBJECT: The Freedom of Information Act (FOIA)

The Freedom of Information Act (FOIA), 5 U.S.C. § 552, reflects our nation's fundamental commitment to open government. This memorandum is meant to underscore that commitment and to ensure that it is realized in practice.

A Presumption of Openness

As President Obama instructed in his January 21 FOIA Memorandum, "The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails." This presumption has two important implications.

First, an agency should not withhold information simply because it may do so legally. I strongly encourage agencies to make discretionary disclosures of information. An agency should not withhold records merely because it can demonstrate, as a technical matter, that the records fall within the scope of a FOIA exemption.

Second, whenever an agency determines that it cannot make full disclosure of a requested record, it must consider whether it can make partial disclosure. Agencies should always be mindful that the FOIA requires them to take reasonable steps to segregate and release nonexempt information. Even if some parts of a record must be withheld, other parts either may not be covered by a statutory exemption, or may be covered only in a technical sense unrelated to the actual impact of disclosure.

At the same time, the disclosure obligation under the FOIA is not absolute. The Act provides exemptions to protect, for example, national security, personal privacy, privileged records, and law enforcement interests. But as the President stated in his memorandum, "The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears."

Pursuant to the President's directive that I issue new FOIA guidelines, I hereby rescind the Attorney General's FOIA Memorandum of October 12, 2001, which stated that the Department of Justice would defend decisions to withhold records "unless they lack a sound

legal basis or present an unwarranted risk of adverse impact on the ability of other agencies to protect other important records.”

Instead, the Department of Justice will defend a denial of a FOIA request only if (1) the agency reasonably foresees that disclosure would harm an interest protected by one of the statutory exemptions, or (2) disclosure is prohibited by law. With regard to litigation pending on the date of the issuance of this memorandum, this guidance should be taken into account and applied if practicable when, in the judgment of the Department of Justice lawyers handling the matter and the relevant agency defendants, there is a substantial likelihood that application of the guidance would result in a material disclosure of additional information.

FOIA Is Everyone's Responsibility

Application of the proper disclosure standard is only one part of ensuring transparency. Open government requires not just a presumption of disclosure but also an effective system for responding to FOIA requests. Each agency must be fully accountable for its administration of the FOIA.

I would like to emphasize that responsibility for effective FOIA administration belongs to all of us—it is not merely a task assigned to an agency's FOIA staff. We all must do our part to ensure open government. In recent reports to the Attorney General, agencies have noted that competing agency priorities and insufficient technological support have hindered their ability to implement fully the FOIA Improvement Plans that they prepared pursuant to Executive Order 13392 of December 14, 2005. To improve FOIA performance, agencies must address the key roles played by a broad spectrum of agency personnel who work with agency FOIA professionals in responding to requests.

Improving FOIA performance requires the active participation of agency Chief FOIA Officers. Each agency is required by law to designate a senior official at the Assistant Secretary level or its equivalent who has direct responsibility for ensuring that the agency efficiently and appropriately complies with the FOIA. That official must recommend adjustments to agency practices, personnel, and funding as may be necessary.

Equally important, of course, are the FOIA professionals in the agency who directly interact with FOIA requesters and are responsible for the day-to-day implementation of the Act. I ask that you transmit this memorandum to all such personnel. Those professionals deserve the full support of the agency's Chief FOIA Officer to ensure that they have the tools they need to respond promptly and efficiently to FOIA requests. FOIA professionals should be mindful of their obligation to work “in a spirit of cooperation” with FOIA requesters, as President Obama has directed. Unnecessary bureaucratic hurdles have no place in the “new era of open Government” that the President has proclaimed.

Working Proactively and Promptly

Open government requires agencies to work proactively and respond to requests promptly. The President's memorandum instructs agencies to "use modern technology to inform citizens what is known and done by their Government." Accordingly, agencies should readily and systematically post information online in advance of any public request. Providing more information online reduces the need for individualized requests and may help reduce existing backlogs. When information not previously disclosed is requested, agencies should make it a priority to respond in a timely manner. Timely disclosure of information is an essential component of transparency. Long delays should not be viewed as an inevitable and insurmountable consequence of high demand.

In that regard, I would like to remind you of a new requirement that went into effect on December 31, 2008, pursuant to Section 7 of the OPEN Government Act of 2007, Pub. L. No. 110-175. For all requests filed on or after that date, agencies must assign an individualized tracking number to requests that will take longer than ten days to process, and provide that tracking number to the requester. In addition, agencies must establish a telephone line or Internet service that requesters can use to inquire about the status of their requests using the request's assigned tracking number, including the date on which the agency received the request and an estimated date on which the agency will complete action on the request. Further information on these requirements is available on the Department of Justice's website at www.usdoj.gov/oip/foiapist/2008foiapist30.htm.

Agency Chief FOIA Officers should review all aspects of their agencies' FOIA administration, with particular focus on the concerns highlighted in this memorandum, and report to the Department of Justice each year on the steps that have been taken to improve FOIA operations and facilitate information disclosure at their agencies. The Department of Justice's Office of Information Policy (OIP) will offer specific guidance on the content and timing of such reports.

I encourage agencies to take advantage of Department of Justice FOIA resources. OIP will provide training and additional guidance on implementing these guidelines. In addition, agencies should feel free to consult with OIP when making difficult FOIA decisions. With regard to specific FOIA litigation, agencies should consult with the relevant Civil Division, Tax Division, or U.S. Attorney's Office lawyer assigned to the case.


This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or equity by any party against the United States, its departments, agencies, instrumentalities or entities, its officers, employees, agents, or any other person.



Homeland Security

October 30, 2009

MEMORANDUM FOR: Distribution

FROM: Mary Ellen Callahan 
Chief FOIA Officer and Chief Privacy Officer

SUBJECT: Calendar Format for Proactive Disclosure

On August 26, 2009, Chief FOIA Officer Mary Ellen Callahan issued guidance on Proactive Disclosure and Departmental Compliance with Subsection (a)(2) of the Freedom of Information Act and directed the Department and its components to make certain categories of records available on their agency websites, to include historical daily schedules of the most senior agency officials. This document provides guidance on formatting senior officials' schedules.

Please note the following guidelines are intended to be general. The Privacy Office recommends posting the calendars of those at the Assistant Secretary (or equivalent) level or higher, however determining which officials constitute "senior agency officials" (as the term is used in the memorandum) will be up to individual components. As the core purpose of the Freedom of Information Act is to give the public insight regarding government operations, we recognize there may be instances where the disclosure of certain officials' calendars would result in products so greatly abridged for security reasons as to render them of limited value to the public. Such determinations will also be made by individual components.

There are at least three options for preparing historical schedules of those senior officials the component determined to proactively disclose. The first option is to only disclose public events, similar to what Secretary Clinton does at the State Department.¹ The second option is to take the complete calendar and redact the information that would be exempt from disclosure under FOIA, as if completing a FOIA request for the calendar. The third option, which is the one we recommend if possible, is to do a "public" version of your calendar with the FOIA-exempt information removed (rather than redacted).

In the interest of consistency, we recommend utilizing the following guidelines when preparing senior officials' calendars for posting regardless of which option you select. Components should

¹ <http://www.state.gov/r/pa/prs/appt/2009appt/index.htm>

post calendars in their electronic reading room retroactively, allowing at least two weeks to pass between the occurrence of the events and the posting of the calendars.

The format should be: *Location, Meeting Type: Description*

(i.e. "NAC, Weekly Staff Meeting: DHS Leadership")

- **Location:** Please specify the general location of events that take place outside of your main office. Three locations are self-explanatory (NAC, White House, Capitol Hill). For any other location, please specify "Offsite" and then list the location. If meetings are taking place during a trip, specify that these meetings are part of your travel itinerary.

NAC

White House

Capitol Hill

Offsite: (description)

Travel: (city/state or city/country)

Examples:

NAC, Weekly Staff Meeting: DHS Leadership

White House, Cabinet Meeting: Recovery Roadmap

Capitol Hill, Briefing: Classified

Offsite: Czech Embassy, Meeting: Information Sharing Agreements

Travel: Detroit, Michigan, Meeting: Arab-American Outreach

- **Meeting Type:** Please use the following terms to describe the events on your schedule:

Meeting

Committee Meeting

Staff Meeting

Preparation Meeting

Cabinet Meeting

Administrative Meeting

Briefing

Phone Call

Teleconference

Breakfast

Lunch

Dinner

Staff Interview

Media Interview

Office Time

Personal Leave

Personal Appointment

Examples:

NAC, **Administrative Meeting**: New Hiring Procedures

NAC, **Briefing**: Cybersecurity Capability

White House, **Cabinet Meeting**: Classified

For recurring meetings, use the format *Location, Frequency Type: Description*

Examples:

Offsite: Ronald Reagan Building, **Daily Briefing**: Classified

NAC, **Weekly Staff Meeting**: Senior Staff

Bi-Weekly Teleconference: FOIA Officers

- **Description:** Provide a succinct description of the meeting or event taking place. For meetings where the subject is classified, simply indicate "Classified."

Examples:

White House, Cabinet Meeting: **Recovery Roadmap**

Offsite: Czech Embassy, Meeting: **Information Sharing Agreements**

Travel: Detroit, Michigan, Meeting: **Arab-American Outreach**

Offsite: Ronald Reagan Building, Daily Briefing: **Classified**

- **Other Notes:**

"Personal Leave" or "Personal Appointment"

- No further description is necessary

- Do not include when the personal event is occurring outside of normal business hours

Examples:

Doctor's Appointment at 1pm, then returning to the office should read, "Personal Appointment"

Taking leave for a half day should read, "Personal Leave"

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Homeland Security

May 28, 2009

MEMORANDUM FOR: Distribution

FROM: Mary Ellen Callahan
Chief FOIA Officer

A handwritten signature in black ink, appearing to read "Me, Ellen Callahan", written over the printed name and title.

SUBJECT: Overview of the Freedom of Information Act

On January 21, 2009, President Obama issued two important memoranda to the heads of Executive Departments and Agencies concerning government transparency. In one he committed his administration to an "unprecedented level of openness in government," and in the other he stressed the importance of the Freedom of Information Act (FOIA), stating that it is "the most prominent expression of a profound national commitment to ensuring an open government." My office is preparing more formal guidance on the President's FOIA initiative. In the meantime, it is necessary that all current and incoming Departmental employees have an understanding of what is encompassed under FOIA, and how it impacts DHS records. Please distribute this within your Component/office as appropriate.

Presumption of Disclosure

FOIA gives any person a right, enforceable in court, to access federal agency records, except to the extent that such records (or portions of them) are protected from public disclosure by exemption or exclusion. The basic purpose of the FOIA is to ensure a fundamental principle of a democratic society -- that the public has a right to access and be informed about the activities of its government. Under President Obama's memoranda and the Attorney General's implementing guidelines, agencies are encouraged to process FOIA requests with a presumption of disclosure and further encouraged to make discretionary releases. Thus, even if an exemption would apply to a record, discretionary disclosures are encouraged. If full disclosure of a record is not possible, any portion of that record that is not subject to an exemption will be disclosed.

For purposes of FOIA, an agency record is either created or obtained by an agency, and the agency is either in possession or control of the record at the time a FOIA request is made. The term record has been defined broadly to include any information in any format maintained by an agency, and/or individuals in that agency, including electronic format. Typically, this may include emails, memoranda, correspondence files, or similar work products that are kept in hard copy or electronic files, information contained on discs or other storage media, handwritten notes, calendars, audio/videotapes, and photos. Documents obtained from another executive

branch agency may also be processed through a referral and consultation process. With respect to documents created or possessed by contractors, they may also constitute agency records if they are under control of DHS.

Exemptions

In certain circumstances, some information found in agency records may be withheld. The information must fall within an exemption specifically designated under FOIA. The relevant exemptions for DHS are listed as follows:

- Exemption (1) – Classified Information
- Exemption (2) – (“low” and “high”) Internal Administrative Matters
- Exemption (3) – Statutory Exemptions
- Exemption (4) – Commercial Information
- Exemption (5) – Common Law Privileges
- Exemption (6) – General Privacy
- Exemption (7) – Government Law Enforcement

It is important to note that exemptions do not apply merely because full or partial disclosure may cause embarrassment or demonstrate an error or failure. Therefore, all records responsive to a FOIA request should be produced to the Component or Department FOIA office to undergo an extensive review process. The Department has a well-established FOIA review process that closely coordinates with the subject matter experts within each program to make determinations regarding release. If you have further questions regarding FOIA, please feel free to contact either the Department’s FOIA Office within the Privacy Office at 703-235-0790 or your Component’s FOIA office.

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Homeland Security

Privacy Office, Mail Stop 0655

August 26, 2009

MEMORANDUM FOR: Distribution

FROM: Mary Ellen Callahan 
Chief FOIA Officer and Chief Privacy Officer

SUBJECT: Proactive Disclosure and Departmental Compliance with
Subsection (a)(2) of the Freedom of Information Act (FOIA)

On January 21, 2009, President Obama issued two important memoranda to the heads of Executive Departments and Agencies concerning government transparency. In one memorandum the President committed his administration to an "unprecedented level of openness in government," and in the other he stressed the importance of the Freedom of Information Act (FOIA), stating that it is "the most prominent expression of a profound national commitment to ensuring an open government." Critical to ensuring the Department of Homeland Security (DHS) successfully meets the President's standards is compliance with the transparency requirements outlined by 5 U.S.C. § 552(a)(2) of the FOIA. Under subsection (a)(2), federal agencies must make four distinct categories of records affirmatively available for "public inspection and copying."¹ Agencies must satisfy this provision of the FOIA by promptly making the records available, either by proactively publishing records electronically to the Department's website or in a combination of electronic and conventional "paper" reading rooms. The Department maintains the designated records in electronic reading rooms on the DHS Headquarters and component websites.

Per the requirements set forth in the Attorney General's May 30, 2008, report to the President on agency progress under Executive Order 13,392, "Improving Agency Disclosure of Information," DHS and its components certified compliance with the minimum requirements with subsection (a)(2) October 31, 2008. Though the Department has taken numerous steps to improve its FOIA

¹ The four categories of records to be made available are:

- A. final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;
- B. those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register;
- C. administrative staff manuals and instructions to staff that affect a member of the public; and
- D. records disclosed in response to a FOIA request that "the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records."

program, including making the electronic reading room more robust, the current Presidential initiatives require an even greater degree of openness.

As Chief FOIA Officer, I direct the Department and its components to include the following categories of records on their agency websites and link them to their respective electronic reading rooms:

1. Historical daily schedules of the most senior agency officials (notated to reflect that officials may have deviated from the posted schedule and abridged as appropriate for security and privacy concerns)
2. Executed contracts & grants
3. Management directives and instructions
4. Congressional correspondence under DHS control
5. FOIA logs
6. Any records released pursuant to a FOIA request that have been, or are likely to become, the subject of three or more requests²

All of the aforementioned items are being proactively disclosed at the discretion of the Department in an effort to comply with the President's memoranda. All of the aforementioned items are frequently the subject of FOIA requests, and are not usually subject to FOIA exemptions. However, nothing in this memorandum is intended to limit components' ability to proactively post additional records beyond those suggested consistent with FOIA and other disclosure laws. A component may choose to post documents specific to its function in order to further advance transparency. For example, FEMA may choose to proactively post disaster related records in order to obviate the need to process these commonly requested records. In an effort to implement these recommendations, I have asked Mr. William Holzerland, Associate Director of Disclosure and FOIA, at 703-235-0790, to be available to advise the components in this effort. Please ask your FOIA Officer to contact Mr. Holzerland within 20 days to provide him a timetable for completion of these electronic reading room upgrades, and to keep Mr. Holzerland apprised of component progress. Mr. Holzerland will be reporting to me on this effort.

Thank you for your continuing efforts on behalf of the Department's FOIA program. I look forward to working with you on this and other FOIA initiatives to fulfill the President's commitment to transparency.

² 5 U.S.C. § 552(a)(2)(D).

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**Homeland
Security**

Privacy Office, Mail Stop 0655

December 8, 2010

DHS FOIA Office
Procedures and Standards for Effectively Implementing Section (a)(2)(D) of the FOIA
"Frequently Requested Documents" Procedures

On August 26, 2009, the DHS Chief FOIA Officer issued a Memorandum instructing DHS Component FOIA officers to engage in proactive disclosure for a series of documents that may be in the public interest, including frequently requested documents.¹ This related memorandum outlines the process for determining when and how to disclose such frequently requested documents.

Section (a)(2)(D) of the Freedom of Information Act, as amended, instructs agencies to make publicly available records that "have become or are likely to become the subject of subsequent requests for substantially the same records."

- a. "Under this provision, when records are disclosed in response to a FOIA request, an agency is required to determine whether they have been the subject of multiple FOIA requests [...] or, in the agency's best judgment based upon the nature of the records and types of requests regularly received, are likely to be the subject of multiple requests in the future." Guide to the Freedom of Information Act, 2009 Edition at 17 (Department of Justice)
- b. The language in the statute is phrased in the plural; therefore, the Department of Justice Office of Information Policy established the "rule" of three requests which triggers the posting obligation. FOIA Post, "'Frequently Requested' Records."²

Procedures

1. At DHS FOIA, each new case is input by the FOIA Administrative Assistant into the DHS FOIA Tracking System upon receipt.
 - a. Each new request is assigned one or more key words by the Associate Director for Operations upon receipt.
2. When logging each new case, the FOIA Administrative Assistant will search the Tracking System with relevant key words to determine whether there have been requests for substantially the same records. This "key words" provision should be interpreted such that the FOIA Administrative Assistant conducts a search using terms broad enough to yield results (to the extent they may exist) and review matching search results to verify

¹ http://www.dhs.gov/xlibrary/assets/foia/foia_proactive_disclosure.pdf, Internet, Accessed November 16, 2010

² <http://www.justice.gov/oip/foiapist/2003foiapist28.htm>, Internet, Accessed November 16, 2010

results that turn up substantially the same responsive records actually trigger the Department's (a)(2)(D) obligation.

- a. NOTE: sequential requests such as "all FEMA grants for 2009" and "all FEMA grants for 2010" would likely not be examples of requests for substantially the same records under (a)(2)(D), but may be released under other provisions of the DHS proactive disclosure and the Open Government approaches.
3. When the FOIA Administrative Assistant identifies three or more requests submitted during a three-year time frame for substantially the same records (based on similar search results), the FOIA Administrative Assistant will notify the Associate Director for Operations.
 - a. The Associate Director for Operations reviews the requests to determine if the requests meet the (a)(2)(D) standard for substantially similar records; if so, s/he will authorize in writing that the responsive records be posted on the DHS FOIA website and notify the Deputy Chief FOIA Officer and Chief FOIA Officer of the determination;
 - b. The responsive documents will be processed for public posting, consistent with Section 508 of the ADA;
 - c. The Chief FOIA Officer and/or the Deputy Chief FOIA Officer may, in limited circumstances, determine that documents or portions of documents should not be published in order to avoid violating the disclosure prohibitions of the Privacy Act, Trade Secrets Act, or other statutory preclusion. If such a determination is made, the official will provide the decision and rationale in writing to the Associate Director for Operations.
4. Even if DHS FOIA has not yet received three or more requests for substantially the same records, the Assistant Director for Operations may recommend to the Chief FOIA Officer or, in his or her absence, the Deputy Chief FOIA Officer, to proactively disclose certain types of records pursuant to (a)(2)(D) and the August 26, 2009 DHS Proactive Disclosure Memorandum.
 - a. Such recommendations will be written, with a brief explanation of the public interest in the records;
 - b. The Chief FOIA Officer or, in his or her absence, the Deputy Chief FOIA Officer will concur or dissent from the recommendation in writing.
5. DHS FOIA will disclose the number of (a)(2)(D) disclosures that were made in its Chief FOIA Officer's Report narrative, starting in CY 2011.
6. Pursuant to (a)(2)(E), DHS FOIA will post and maintain a general index of the records referred to under subparagraph (a)(2)(D).



Mary Ellen Callahan
Chief FOIA Officer